

# **PUBLIC SERVICE COMMISSION OF WISCONSIN**

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## **Memorandum**

March 23, 2017

### **FOR COMMISSION AGENDA**

TO: The Commission

FROM: Jeffrey J. Ripp, Administrator  
Carrie Templeton, Assistant Administrator  
Kate Christensen, Program and Policy Analyst  
Division of Energy Regulation

RE: Application of Wisconsin Electric Power Company, 5-DR-112  
Wisconsin Gas LLC, and Wisconsin Public Service  
Corporation for Declaratory Ruling and Approval Regarding  
Long-Term Natural Gas Storage and Transportation  
Arrangements

Suggested Minute: The Commission [denied the petition/directed the issuance of a notice of proceeding sending the matter to hearing].

### **Background**

On February 3, 2017, Wisconsin Electric Power Company, Wisconsin Gas LLC, and Wisconsin Public Service Corporation (applicants) petitioned for a declaratory ruling concerning the reasonableness and prudence of a proposed natural gas storage and transportation transaction (the proposed transaction). ([PSC REF#: 297633](#), [PSC REF#: 297634](#).) The applicants state that the proposed transaction will allow them to secure one-third of their natural gas storage and associated transportation needs, reduce reliance on shorter-term leases and a dominant provider of storage services, and deliver \$200 million in savings to customers over the life of the project. The applicants further state that the proposed transaction is appropriate and timely because the demand and cost for natural gas storage and interstate transportation will rise in the near future

since the demand for natural gas is increasing for electric generation, exports, and liquefied natural gas production.

Under the proposed transaction, the applicants' holding company, WEC Energy Group, Inc. (WEC), will acquire Bluewater Natural Gas Holding, LLC (BGH), which owns underground natural gas storage facilities in Michigan, for a total acquisition cost of \$230 million (\$225 million purchase price plus \$5 million in transaction costs). The applicants state that they are familiar with BGH's Bluewater facility because they currently lease much of its capacity. The applicants state that the Bluewater facility is a relatively new facility that is less likely to require major investments in the near term. Once WEC acquires BGH, the applicants propose to enter into long-term, sixty-year storage service agreements with BGH under an existing Federal Energy Regulatory Commission (FERC) approved market-based rate tariff on terms comparable to ownership that allocate storage capacity to each applicant in proportion to their peak day demands. The applicants state that the proposed transaction is structured in this manner to insulate the applicants from the risk of owning the Bluewater facility and to avoid the need for BGH to cancel its existing market-based rate tariff and the need for the applicants to establish a new market-based rate tariff with FERC.

The applicants state that the Bluewater facility is well connected to interstate pipelines. Indeed, the applicants state that direct transportation from the Bluewater facility to the Guardian pipeline to which the applicants are connected is available at very low cost. Accordingly, the applicants state that they will enter into interstate gas transportation agreements to transport gas between BGH's Bluewater facility and the Guardian pipeline via the Vector pipeline. The applicants request amendment to the WEC Affiliated Interest Agreement to ensure that BGH has

access to the full range of services available within WEC through its service company and the operating companies.

The applicants conducted an economic analysis to derive the \$200 million in savings to customers. In this economic analysis, the applicants compared the costs of the proposed transaction to the costs they would incur using traditional portfolios of services on a shorter-term basis. The applicants indicated that the cost savings are threefold. The applicants will save costs on storage and transportation and will allow the applicants to quickly adapt to market conditions. The applicants can also earn revenue by offering services to third parties. The applicants state that the return of and on the upfront cost of acquiring the Bluewater facility will be the highest in the first year and will then decrease over time as it is depreciated. Thus, the proposed transaction's costs will exceed its savings in the first few years.

### **Legal Standard**

Under Wis. Stat. § 227.41(1), “any agency may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it.” Whether to issue a declaratory ruling is within the Commission’s discretion; a declaratory ruling is not afforded as a matter of right. *Wis. Fertilizers Ass’n v. Karns*, 39 Wis. 2d 95, 107, 158 N.W.2d 294 (1968). “[W]ithin a reasonable time after receipt of a petition [for declaratory ruling],” the Commission must either deny the petition in writing or schedule the matter for hearing. Wisconsin Stat. § 227.41(4). The Commission has implemented this requirement through Wis. Admin. Code § PSC 2.07(5), which requires the Commission to either deny the petition for declaratory ruling or open a docket within 60 days after receipt of the petition. If the Commission denies the petition for declaratory ruling, it must promptly notify the petitioner of its decision, including a brief statement of the reasons for denial.

Wisconsin Stat. § 227.41(4). If the Commission opens a docket, a “[f]ull opportunity for hearing shall be afforded to interested parties.” *Id.* § 227.41(1). Even though the Commission has not yet made its decision whether to deny the petition or to grant the petition sending the matter to hearing, several parties have already intervened. (ANR Pipeline Company ([PSC REF#: 298721](#)), Wisconsin Industrial Energy Group ([PSC REF#: 298795](#)), and Citizens Utility Board ([PSC REF#: 298814](#)).)

## **Discussion**

The applicants’ petition for declaratory ruling requests two declarations from the Commission under Wis. Stat. § 227.41. First, the applicants request that the Commission declare that it is reasonable and prudent for the applicants to enter into the long-term storage service and interstate gas transportation agreements. Second, the applicants request that the Commission declare that it is reasonable and prudent for the applicants to recover their allocated portions of the costs to acquire, operate, and maintain the Bluewater facility through their purchase gas adjustment clauses. Separately, as noted above, the applicants request, under Wis. Stat. § 196.52, that the Commission approve amendments to the WEC Affiliated Interest Agreement to enable WEC affiliates to serve and support the Bluewater facility.<sup>1</sup> Commission staff sent the applicants data requests seeking to obtain further information regarding the proposed transaction. ([DL: 1502009](#).) Responses to these requests may not be received prior to the Commission’s deadline for making its determination as to whether to grant the petition.

If the Commission finds that the applicants have satisfied the statutory requirements, the Commission may exercise its discretion to either direct the matter to hearing through the

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<sup>1</sup> Requests to amend affiliated interest agreements are typically handled in a separate docket and not via a petition for declaratory relief.

issuance of a notice of proceeding or deny the petition. If the Commission finds that the applicants have not satisfied the statutory requirements or simply decides to exercise its discretion and not provide the requested relief, it may deny the petition. If the Commission denies the petition, it will need to issue an order explaining its reasons for denying the petition. Further, if the Commission denies the petition for declaratory ruling, it could require the applicants to refile a separate application for approval to amend the WEC Affiliated Interest Agreement under Wis. Stat. § 196.52 if the applicants still intend to amend that agreement, and the Commission could direct that any other issues associated with the petition be addressed in other Commission proceedings of the applicants, such as the applicants next rate case or gas supply plan proceedings.

### **Commission Alternatives**

**Alternative One:** Grant the petition and direct the issuance of a Notice of Proceeding, sending the matter to hearing.

**Alternative Two:** Deny the petition by issuing an order containing a brief statement of the reasons for the denial and [provide/do not provide] further direction.

- A. Require the applicants to refile a separate application for approval to amend the WEC Affiliated Interest Agreement under Wis. Stat. § 196.52 if they still intend to amend that agreement.
- B. Direct that the issues presented in the petition be addressed in the applicants' next rate case or gas supply plan proceedings.

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#### Key Background Documents

[MI NGS Project Application \(CONFIDENTIAL\) - PSC REF#: 297633](#)  
[\(REDACTED COPY\) MI NGS Project Application \(CONFIDENTIAL\) - PSC REF#: 297634](#)